

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the present amendments and following discussion, is respectfully requested.

Claims 1-21 are pending; Claims 3 and 10 are amended and no claims are newly added or canceled herewith. As support for the present amendment may be found, at least for example, in original Claim 1, it is respectfully submitted that no new matter is added by this amendment.

In the outstanding Office Action, Claims 1, 2, 8, and 9 were rejected under 35 U.S.C. §102(b) as anticipated by Viltro et al. (U.S. Pat. No. 5,837,005, hereafter Viltro); Claims 3, 4, 10, and 11 were rejected under 35 U.S.C. §102(b) as anticipated by Zeoli-Jones (U.S. Pat. No. 5,840,418); Claims 5-7, 12-14, 19, and 21 were rejected under 35 U.S.C. §103(a) as unpatentable over Zeoli-Jones; Claim 15 was rejected under 35 U.S.C. §103(a) as unpatentable over Viltro in view of Ono et al. (WO 99/511174, hereafter Ono); and Claims 16-18 and 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Viltro.

Initially, with regard to the statement in the outstanding Office Action at page 7, lines 7 and 8, it is respectfully noted that the amendment filed March 15, 2005 and the present amendment refer to WO 99/511174 as "Ono" (as noted above). Accordingly, the present amendment and the amendment filed March 15, 2005 do not address Ono et al. (U.S. Patent No. 6,629,964), contrary to the assertion in the outstanding Office Action.

With regard to the rejection of Claims 1, 2, 8, and 9 under 35 U.S.C. §102(b) as anticipated by Viltro, that rejection is respectfully traversed. Independent Claims 1 and 8 recite, in part, an outermost base sheet adapted to contact hair when in the wrapping state and that the outermost base sheet comprises a water resistant material. As shown in Figure 2, the base sheet is the outermost layer of the hair warming tool and comes into contact with the wrapped hair.

The outstanding Office Action alleged, “The pad is capable of being wrapped around a user’s hair with either the release paper still attached or in the embodiment with alternative fastening means, since the sheet is flexible and of a generally appropriate size, (See Figs. 1 and 2; col.3, lines 55-57; and col. 4, lines 15-34). Release paper is a water resistant material since it is coated with wax or the like to protect the adhesive while still being readily releasable.”<sup>1</sup>

Applicants respectfully disagree with these statements for several reasons. First, if the device described by Viltro does not include release paper 36, it clearly does not include an “outermost base sheet comprising a water resistant material,” as recited in Claims 1 and 8. As discussed in the previous amendment, Viltro states that first and second fabric layers 26 and 30 (the outermost layers) may be made of cotton or polyester. Thus, Viltro describes that first and second fabric layers 26 and 30 are *not* made of a water resistant material.<sup>2</sup>

With regard to release paper 36 described by Viltro, the release paper is clearly adapted to be easily removable, so that adhesive 34 may be attached to an article of clothing.<sup>3</sup> If the device described by Viltro were wrapped around hair as proposed in the outstanding Office Action, the release paper would release from the adhesive due to the difference in curvature of fabric 26 and paper 36. Thus, the release paper would no longer be part of the proposed “hair warming tool.” Further, the user’s hair would likely become attached to the adhesive, making the proposed “hair warming tool” unusable for its intended purpose. Accordingly, release paper 36 of Viltro is not “adapted to contact hair when in the wrapping state,” as required by Claims 1 and 8.

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<sup>1</sup>See outstanding Office Action, page 2, lines 16-21.

<sup>2</sup>See Viltro, column 6, lines 1-24.

<sup>3</sup>See Viltro, column 4, lines 15-24.

Accordingly, as Viltro fails to disclose or suggest the outermost base sheet recited in independent Claims 1 and 8, it is respectfully submitted that Claims 1, 2, 8, and 9 patentably distinguish over Viltro. It is therefore respectfully requested that this rejection be withdrawn.

Regarding the rejection of Claims 3, 4, 10, and 11 under 35 U.S.C. §102(b) as anticipated by Zeoli-Jones, this rejection is also respectfully traversed.

Amended Claim 3 recites a hair treating method comprising, *inter alia*, “activating at least one heating part of a hair warming tool of sheet form including an outermost base sheet comprising a water resistant material, said heating part including a heat generating material.”

Zeoli-Jones describes a thermal transfer hair treatment cap including a liner 12 surrounding gel 68. Gel 68 does not generate heat, but instead stores heat generated by microwaves.<sup>4</sup> Thus, Zeoli-Jones does not teach “activating at least one heating part of a hair warming tool of sheet form including an outermost base sheet comprising a water resistant material, said heating part including a heat generating material,” as recited in amended Claim 3, or “activating a heat generating portion of a hair warmer,” as recited in amended Claim 10.

Further, Zeoli-Jones states that liner 12 is preferably constructed of a cotton lycra fabric,<sup>5</sup> which is not waterproof. Accordingly, it is respectfully submitted that Zeoli-Jones does not disclose or suggest an outermost base sheet adapted as recited in Claims 3 and 10, from which Claims 4 and 11 depend.

Thus, as Zeoli-Jones fails to disclose or suggest all the elements of Claims 3, 4, 10, and 11, it is respectfully requested that this rejection be withdrawn.

With regard to the rejection of Claims 5-7, 12-14, 19, and 21 under 35 U.S.C. §103(a) as unpatentable over Zeoli-Jones, this rejection is also respectfully traversed.

As explained above, Zeoli-Jones fails to disclose or suggest activating a heating portion or a heat generating part as recited in amended independent Claims 3 and 10, from

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<sup>4</sup>See Zeoli-Jones, column 4, lines 23-31.

<sup>5</sup>See Zeoli-Jones, column 3, lines 46-56.

which Claims 5-7 and 19, and 12-14 and 21 respectively depend. Therefore, it is respectfully requested that the outstanding rejection of Claims 5-7, 12-14, 19, and 21 be withdrawn.

Regarding the rejection of Claim 15 under 35 U.S.C. §103(a) as unpatentable over Viltro in view of Ono, that rejection is respectfully traversed.

As noted above, Viltro fails to disclose or suggest the outermost base sheet of Claim 1, from which Claim 15 depends. Ono describes a steam generating pad 10A with a moisture permeable outer bag 4. Thus, Ono explicitly teaches away from having an outermost base sheet comprising a water resistant material, as recited in Claim 1, from which Claim 15 depends. Since neither Viltro nor Ono, either alone or in combination, teaches or suggests each and every element of Claim 1, Claim 15 is patentable over Viltro and Ono.

Moreover, it is respectfully submitted that there is no basis in the teachings of either Viltro or Ono to support the applied combination. The outstanding Office Action fails to cite to any teachings within either of the references to support the applied combination. Accordingly, it is respectfully submitted that the combination of Viltro with Ono is based upon hindsight reconstruction in view of the Applicants' specification, and is improper.

Finally, with regard to the rejection of Claims 16-18 and 20 under 35 U.S.C. §103(a) as unpatentable over Viltro, that rejection is also respectfully traversed. Claims 16-18 depend from Claim 1 and Claim 20 depends from Claim 8.

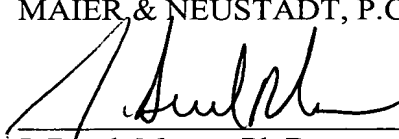
As set forth above, Viltro does not disclose or suggest the outermost base sheet of Claims 1 or 8. Therefore, it is respectfully submitted that Claims 16-18 and 20 patentably distinguish over Viltro, and it is respectfully requested that this rejection be withdrawn.

As set forth above, Viltro does not disclose or suggest the outermost base sheet of Claims 1 or 8. Therefore, it is respectfully submitted that Claims 16-18 and 20 patentably distinguish over Viltro, and it is respectfully requested that this rejection be withdrawn.

Consequently, in view of the foregoing discussion and present amendments, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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